CURRENT DECISIONS

ARMY AND NAVY—DRAFT ACT—"WAR MARRIAGE" DOES NOT EXEMPT DRAFTEE.—The petitioner, having been directed to report for military service, sought by *certiorari* to review the action of a District Board which had placed him in Class 1. He had claimed deferred classification as a married man but his marriage took place June 27, 1917. Section 72, rule 5, of Selective Service Regulations directs draft boards to scrutinize marriages contracted since May 18, 1917, and to determine whether such marriage was entered into with a view to evading military duty, "and unless such is found not to be the case" to disregard the marriage in the classification of the registrant. *Held,* that the petitioner was properly classified, since the registrant must prove affirmatively that his marriage was not contracted with a view to evading the draft. *Boitano v. District Board* (1918, N. D. Cal.) 250 Fed. 812.

So-called "war marriages" gave the local draft boards much trouble. This decision seems clearly correct. Indeed, as the court says, the discharge of the petitioner's writ might have been rested upon the finality of the finding by an administrative board such as are the draft boards. See (1918) 27 YALE LAW JOURNAL, 683, at 686.

ATTORNEYS—POWERS AND COMPENSATION—APPOINTMENT BY COURT TO PROTECT INTEREST OF SOLDIER DEFENDANT.—Pursuant to the Soldiers' and Sailors' Civil Relief Act (Act Cong. Mar. 8, 1918), an attorney was appointed by the court to represent and protect the interest of a defendant who was in military service. Questions as to the attorney's authority to serve a notice of appearance for the defendant, and as to his compensation were presented on motions. *Held,* that while the appearance of such attorney might properly be noted at any stage of the proceeding, he had no right to serve a notice of appearance or answer binding upon the absentee; also that no provision was made by the laws of New York for compensation for services rendered by such attorney. *Davison v. Lynch* (1918, Sup. Ct. Sp. T.) 171 N. Y. Supp. 46.

The general features of the Soldiers' and Sailors' Civil Relief Act were discussed in (1918) 27 YALE LAW JOURNAL, 802. The principal case appears to be the first reported decision construing the Act in respect to the questions here involved. As to the first point, the subject is clearly covered by the terms of the Act that "no attorney appointed under this Act . . . shall have power to waive any right of the person for whom he is appointed or bind him by his acts." On the subject of compensation the court says that "every member of the bar should regard it as his patriotic duty to devote his best efforts to the protection of a defendant in the military service regardless of compensation." To this call the profession is certain to make a patriotic response.

BILLS AND NOTES—PAYEE AS HOLDER IN DUE COURSE—EFFECT OF N. I. L.—The defendant endorsed for accommodation a note in which the name of the payee had not been filled in. His endorsement was obtained by the fraudulent delivery to him of a worthless mortgage as security, and by the false promise of the maker's agent that the plaintiff's name should not be inserted as payee. The note was complete when delivered to the plaintiff, who took it in good faith in settlement of a claim against the maker. The plaintiff recovered judgment and

the defendant appealed. *Held,* that the judgment was correct, as the payee of this promissory note was a holder in due course. *Johnston v. Knipe* (1918, Pa.) 103 Atl. 957.

That a payee might be a holder in due course at common law was undoubted. Whether he may still be such under the N. I. L. depends on whether sec. 30 (original notation) is held by its enumeration to exclude every other form of negotiation, such as, *e. g.,* that to a payee. Here, as in other connections, the saner and sounder result seems to be obtained by regarding the N. I. L. not as a codification intended to be exhaustive, but as legislation which left the common law in force in *all* points not fairly covered by the language of the statute. See Comments (1918) 27 YALE LAW JOURNAL, 686. The instant case applies this salutary principle. There is not over-much authority on the precise point. See (1915) 24 YALE LAW JOURNAL, 429, and (1918) 27 *ibid.* 558.

CONTRACTS—DEFENSES—EPIDEMIC OF INFANTILE PARALYSIS EXCUSING NON-PERFORMANCE.—The plaintiffs agreed to manage and provide prizes for a baby show at Charter Oak Park in Hartford on September 6, 1916. The defendant promised to supply a room for the show and to pay the plaintiffs $600. About the middle of August the defendant notified the plaintiffs that it wished to cancel the contract because of an epidemic of infantile paralysis which would make it dangerous to health to hold the baby show at the time proposed. To an answer setting up these facts the plaintiffs demurred. *Held,* that the defense was good, since the holding of the proposed show under the circumstances would, as matter of law, be contrary to public policy, and therefore the abandonment of it upon such contingency was an implied term of the contract. Two judges *dissenting. Hanford et al. v. Connecticut Fair Ass'n* (1918) 92 Conn. 621, 103 Atl. 838.

The dissenting judges in a very persuasive opinion combat the broad principle that whenever an otherwise lawful act becomes dangerous to public health because of an external temporary condition it automatically becomes contrary to public policy and therefore unlawful, without any statute or order from health officials declaring it to be so.

CONSTITUTIONAL LAW—INDIANA PROHIBITION LAW VALID.—The Prohibition Law of Indiana (Acts 1917, ch. 4) prohibits the manufacture, sale, gift, advertisement or transportation of intoxicating liquor except for certain specified purposes. The plaintiffs, brewers, sought an injunction to restrain the superintendent of police of an Indiana city from enforcing the law, on the ground that it violated the state constitution. *Held,* that the law was a valid exercise of the police power. Spencer, J., *dissenting. Schmitt v. F. W. Cook Brewing Co.* (1918, Ind.) 120 N. E. 19.

This case is of interest for the reason that almost alone among the authorities stands the case of *Beebe v. State* (1855) 6 Ind. 501, holding that the state legislature had no power to prohibit the manufacture and sale of intoxicating liquors. The principal case overrules that decision. Mr. Justice Spencer dissented not merely on the ground of *stare decisis* but upon what he believed to be sound constitutional principles.

COURTS—CIRCUIT COURT OF APPEALS—FOLLOWING PRECEDENTS FROM OTHER CIRCUIT COURTS.—The state of Arkansas imposed an annual tax on a railroad company for the privilege of exercising its franchise within the state, making the tax a first lien on the property of the corporation, whether in its own hands or